
(1924) 05 AHC CK 0029
In the Allahabad High Court

Gopal Rai, Phul Chand

APPELLANT

Vs

The Great Indian Peninsula Railway Company

RESPONDENT

Date of Decision : 21-05-1924

Acts Referred:

Railways Act, 1890 — Section 72
Railways Act, 1890 — Section 72
Railways Act, 1890 — Section 72

Citation : AIR 1924 All 621 : (1924) ILR (All) 837

Hon'ble Judges : Neave, J;Daniels, J

Bench : Division Bench

Judgement

Daniels and Neave, JJ.—These three connected appeals have been heard together. They relate to claims by different plaintiffs against the Great Indian Peninsula Rail way Company. In this judgment we refer¹ in particular to the facts of the Second Appeal No. 1225 of 1922; hut the facts of the others are admittedly on all fours with them and the points for decision are the same.

2. On the 26th of November, 1920, a bale of cloth was delivered to the Great Indian Peninsula Railway Company at Victoria Terminus, Bombay, for despatch to railway station Yusufpur on the Bengal and North-Western Railway. The goods were never delivered. It is also admitted that they never reached the Bengal and North-Western Railway. A risk note in form B was executed in respect of this consignment by one Hari Gobind whom the learned District Judge finds to be the person who delivered the goods to the railway company. The learned Judge finds that the loss of the goods was due to theft from a, running train, that the guard of the train knew that theft was being committed but that he is not show to have been negligent in not stopping the train in order to prevent the theft or recover the goods.

3. The two questions which have been argued before us wee: Whether the risk note was validly executed within the meaning of Section 72 of the Indian Railways Act; (2) Whether the railway company is protected by it.

4. As to the former point Section 72 provides that the note must be signed by or on behalf of the person sending or the person delivering the goods to the railway company. In this case Hari Gobind purported to sign on behalf of the sender, R. Ramdeo. The learned Judge finds that he is not proved to have been R. Ramdeo's agent, but he finds that he was the deliverer of the goods to the railway company. This is a finding of fact which we must accept and it is sufficient to bring the note within the terms of Section 72.

5. If the decision of the second issue depended on our being able to accept the learned Judge's view that there was No. negligence on the part of the railway company's servants we might have difficulty in upholding it. We find, however that under the terms of the risk note the Railways absolutely projected in case of robbery from a running train, which in this case is proved. It has been held in two cases of this Court, *East Indian Railway Co. v. Nathmal, Behari Lal* ILR 1917 All. 418 and *Great Indian Peninsula Railway Co. v. Bhola Nath, Debi Das* ILR 1922 All. 56 that as used in risk note B the word "robbery" is synonymous with "theft". It has been argued on behalf of the appellants that the railway is not protected if the robbery was due to negligence on the part of the railway company's servants. We think that the form of risk note is not capable of this construction. The risk note in the first instance holds the railway company free from responsibility for any loss, or destruction of or damage to the goods from any cause whatever. To this there is an exception, namely, that when loss of a complete consignment is due to one of three causes the railway company can be held liable. These three causes are:

(1) Wilful neglect on the part of the railway administration.

(2) Theft by the servants of the railway.

(3) Wilful neglect of the servants of the railway.

6. There is, however, an exception to the exception, in the shape of a further proviso, which lays down that wilful neglect is not to be held to include fire, robbery from a running train, or any other unforeseen event or accident. Where therefore the plaintiff depends for his cause of action on wilful neglect on the part of either the railway administration or any of its servants he cannot succeed if it is shown that the loss of the goods was due to theft from, a running train. This view of the risk note was at least impliedly taken in the second of the cases referred to above, namely, *Great Indian Peninsula Railway Co. v. Bhola Nath, Debi Das* ILR 1922 All. 56. It is directly laid down in *The Bombay, Baroda and Central India Railway v. Ranchhodlal Chhotalal* ILR 1919 43 Bom. 769. The material passage, which is on page 773, is as follows: "In the absence of proof of wilful neglect or theft by the railway servants the administration is to be held free from responsibility. If, however, neglect or theft by railway servants is proved, the administration will escape liability for loss if proof is given of robbery from a running train.

7. We think, therefore, that the decision of the lower court is correct and dismiss

all three appeals. In view of the fact that in our opinion there was gross negligence on the part of the Great Indian Peninsula Railway Company we allow to that) company no costs of the appeals. The other railway companies who have been impleaded in Second Appeals Nos. 1504 and 1507 of 1922 are entitled to their costs.